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**DEPARTMENT OF THE TREASURY  
UNITED STATES CUSTOMS SERVICE**

**19 CFR PART 12**

**(T.D. 00 - 52)**

**RIN 1515-AC36**

**FORCED OR INDENTURED CHILD LABOR**

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations with the particular intent to stop illegal shipments of products of forced or indentured child labor and to punish violators. The document amends the Customs Regulations to provide for the seizure and forfeiture of merchandise that is found to be a prohibited importation under 19 U.S.C. 1307, concerning products of convict labor, forced labor, or indentured labor under penal sanctions, including forced or indentured child labor under penal sanctions.

The amendment makes clear that nothing in the Customs Regulations precludes Customs from seizing for forfeiture merchandise imported in violation of applicable Federal criminal law dealing with prison-labor goods. The amendments form part of a vigorous law enforcement initiative undertaken by Customs to prohibit the importation of merchandise produced by forced or indentured child labor.

**EFFECTIVE DATE:** [30 days from July 26, 2000.]

**FOR FURTHER INFORMATION CONTACT:**

Glen E. Vereb, Office of Regulations and Rulings, 202-927-2320.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307) generally prohibits the importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions. Such prohibitions are enforced by Customs under §§ 12.42 - 12.44 of the Customs Regulations (19 CFR 12.42 - 12.44).

If Customs finds, on the basis of information presented and investigated under the procedures described in § 12.42(a)-(e), that a class of merchandise is subject to the prohibition under section 307, the Commissioner of Customs, with the approval of the Secretary of the Treasury, will publish a finding to this effect in the weekly issue of the Customs Bulletin and in the **Federal Register**, as prescribed in § 12.42(f).

Under § 12.43, an importer is afforded the opportunity to furnish proof within 3 months after importation in order to establish the admissibility of particular imported merchandise detained by Customs under § 12.42(e) or covered by a finding under § 12.42(f), that the particular merchandise being imported is not itself produced with the use of a type of labor specified in section 307.

Section 12.44 deals with the disposition of merchandise determined to be inadmissible under section 307. Currently, § 12.44 provides in pertinent part that such merchandise may be exported at any time within the 3-month period after importation.

If not so exported and if no proof of admissibility has been provided, the importer is advised in writing that the merchandise is excluded from entry and, 60 days thereafter, the merchandise is deemed abandoned and will be destroyed unless it has been exported or a protest has been filed under 19 U.S.C. 1514.

### **Forced or Indentured Child Labor**

A general provision in the Fiscal Year (FY) 1998 Treasury Appropriations Act made clear what is implicit in the law: that merchandise manufactured with the use of forced or indentured child labor under penal sanctions falls within the prohibition of section 1307. This Act prohibits Customs from using any of the appropriation to permit the importation into the United States of such merchandise. In addition, in the last three State of the Union addresses, President Clinton has pledged to fight abusive child labor.

Following the enactment of the FY 1998 appropriations amendment regarding forced or indentured child labor under penal sanctions, both the Treasury Department and the National Economic Council chaired in-depth interagency discussions aimed at strengthening the capability of the Executive Branch to enforce the prohibition on imports that were produced by forced or indentured child labor under penal sanctions.

To this end, the Treasury Department, by a document published in the **Federal Register** (63 FR 30813) on June 5, 1998, established a Treasury Advisory Committee on International Child Labor Enforcement, whose ultimate purpose was to support a vigorous law enforcement initiative to stop illegal shipments of products of forced or indentured child labor under penal sanctions and to punish violators. By a document published in the **Federal Register** (65 FR 11831) on March 6, 2000, the Treasury Department determined that it was in the public interest to renew this Advisory Committee for an additional two-year term beyond its original expiration date (June 22, 2000).

### **Proposed Amendment**

As part of the foregoing initiative, by a document published in the **Federal Register** (64 FR 62618) on November 17, 1999, Customs proposed to amend § 12.42(a) to make expressly clear that merchandise manufactured with the use of forced or indentured child labor under penal sanctions falls within the prohibition of 19 U.S.C. 1307.

Also, Customs proposed to amend § 12.44 regarding the disposition to be accorded merchandise that is a prohibited importation under section 307. Under this proposed amendment, in the case of merchandise covered by a finding under § 12.42(f), if the Commissioner of Customs advised the port director that the proof furnished under § 12.43 did not establish the admissibility of a particular importation of such merchandise, or if no proof was timely furnished in this regard, the merchandise

would then be seized and be subject to the commencement of forfeiture proceedings under subpart E of part 162 of the Customs Regulations (19 CFR part 162, subpart E). Currently, such merchandise is permitted to be exported at any time before it is deemed to have been abandoned.

In addition, Customs proposed to amend § 12.44 to state explicitly that nothing in the Customs Regulations (19 CFR Chapter I) precluded Customs from seizing for forfeiture merchandise imported in violation of applicable Federal criminal law (18 U.S.C. 1761 - 1762) dealing with prison-labor goods.

### **Discussion of Comment**

Counsel on behalf of a domestic trade association submitted the only comment in response to the notice of proposed rulemaking. The trade association supported the proposed amendments. However, the association asked that § 12.42 also be amended to impose a one-year time limit within which Customs would need to complete, and take appropriate action in connection with, an investigation undertaken pursuant to 19 U.S.C. 1307. In this regard, the association wanted § 12.42 further revised to require that persons presenting information of an alleged violation of section 1307 be kept informed, along with any interested domestic producers, and any other interested parties, regarding the continuing progress of an investigation. Finally, the association requested that § 12.42(e) be amended to require that the Commissioner withhold release of any merchandise undergoing investigation for a possible violation of 19 U.S.C. 1307 if there were reasonable grounds to believe that the merchandise was indeed a prohibited importation under section 1307.

### **Customs Response**

Customs believes that it would be inappropriate and counterproductive to impose an inflexible time limit in § 12.42 for any investigation initiated under 19 U.S.C. 1307. The quality of the information received regarding suspected violations of section 1307 varies substantially in each case. Extensive and lengthy investigation is required in some cases, and significant barriers (e.g., cultural, political, geographic) must be overcome, in order to obtain the evidence needed to support lawful Customs action under the statute. Also, the disclosure of information regarding ongoing Customs investigations is generally contrary to agency policy.

Lastly, § 12.42(e) already provides that if the Commissioner of Customs finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 1307 is being, or is likely to be, imported, the Commissioner will notify all port directors accordingly. The port directors are then to withhold the release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation. Customs believes that this is sufficient and that no amendment of § 12.42(e) is needed under the circumstances.

### **Conclusion**

In view of the foregoing, and following careful consideration of the issues raised by the commenter and further review of the matter, Customs has concluded that the proposed amendments should be adopted.

### **Additional Changes**

In addition, Customs has determined that the phrase, “ including forced or indentured child labor”, appearing in proposed § 12.42(a), should be revised to read, “including forced or indentured child labor under penal sanctions”, in order to conform precisely with the plain language and requirements of 19 U.S.C. 1307. Also, proposed § 12.44 is revised essentially to retain the provision contained in the current regulation (19 CFR 12.44 (1999)) regarding the disposition to be accorded merchandise that has been detained under § 12.42(e) but that is not subject to a finding under § 12.42(f).

### **REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866**

Because the importation of goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by forced labor is prohibited, Customs anticipates that there will not be a substantial number of small entities that would become involved in a prohibited importation. The rule applies to products subject to a “finding” that the class of merchandise was produced with forced or indentured child labor under penal sanctions, a more formal Customs action with a higher burden of proof than simple Customs detention of merchandise based on reasonable suspicion. Also the range of countries and products which are likely to be implicated in findings of forced or indentured child labor under penal sanctions is likely to be fairly narrow. Accordingly, it is certified, in accordance with the Regulatory

Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities. Nor does the document meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

### **LIST OF SUBJECTS IN 19 CFR PART 12**

Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Restricted merchandise, Seizure and forfeiture.

### **AMENDMENTS TO THE REGULATIONS**

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

### **PART 12 - SPECIAL CLASSES OF MERCHANDISE**

1. The general authority citation for part 12 continues to read as follows, and the relevant specific sectional authority is revised to read as follows:

**AUTHORITY:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

Sections 12.42 through 12.44 also issued under 19 U.S.C. 1307 and Pub. L. 105-61 (111 Stat. 1272);

\* \* \* \* \*

2. Section 12.42 is amended by revising the first sentence of paragraph (a) to read as follows:

#### **§ 12.42 Findings of Commissioner of Customs.**

(a) If any port director or other principal Customs officer has reason to believe that any class of merchandise that is being, or is likely to be, imported into the United

States is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use convict labor, forced labor, or indentured labor under penal sanctions, including forced child labor or indentured child labor under penal sanctions, so as to come within the purview of section 307, Tariff Act of 1930, he shall communicate his belief to the Commissioner of Customs. \* \* \*

\* \* \* \* \*

3. Section 12.44 is revised to read as follows:

**§ 12.44 Disposition.**

(a) Export and abandonment. Merchandise detained pursuant to § 12.42(e) may be exported at any time prior to seizure pursuant to paragraph (b) of this section, or before it is deemed to have been abandoned as provided in this section, whichever occurs first. Provided no finding has been issued by the Commissioner of Customs under § 12.42(f) and the merchandise has not been exported within 3 months after the date of importation, the port director will ascertain whether the proof specified in § 12.43 has been submitted within the time prescribed in that section. If the proof has not been timely submitted, or if the Commissioner of Customs advises the port director that the proof furnished does not establish the admissibility of the merchandise, the port director will promptly advise the importer in writing that the merchandise is excluded from entry. Upon the expiration of 60 days after the delivery or mailing of such advice by the port director, the merchandise will be deemed to have been abandoned and will be destroyed, unless it has been exported or a protest has been filed as provided for in section 514, Tariff Act of 1930.

(b) Seizure and summary forfeiture. In the case of merchandise covered by a finding under § 12.42(f), if the Commissioner of Customs advises the port director that the proof furnished under § 12.43 does not establish the admissibility of the merchandise, or if no proof has been timely furnished, the port director shall seize the merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to part 162, subpart E, of this chapter.

(c) Prison-labor goods. Nothing in this chapter precludes Customs from seizing for forfeiture merchandise imported in violation of 18 U.S.C. 1761 and 1762 concerning prison-labor goods.

Commissioner of Customs  
Raymond W. Kelly

Approved: June 19, 2000

Deputy Assistant Secretary of the Treasury  
John P. Simpson